

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY DANIEL PROFFITT,  
Petitioner,  
v.  
PATRICK COVELLO,  
Respondent.

No. 2:20-cv-01958-KJM-JDP (HC)

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 14, 2020, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 15. Petitioner has filed objections to the findings and recommendations. ECF No. 19.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court does not adopt the magistrate judge's findings and recommendations, and instead dismisses the petition on other grounds.

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1 Proffitt is not a first-time habeas petitioner. Proffitt previously sought relief from his  
2 conviction and sentence in a petition that was dismissed, with prejudice, as barred by the statute  
3 of limitations. *See Proffitt v. Campbell*, 2:06-cv-02143-GEB-GGH (E.D.Cal.). Petitioner  
4 continues to file habeas petitions despite this prior dismissal; a scan of this court's docket reveals  
5 at least twelve habeas corpus petitions. *See e.g., Proffitt v. Covello*, 2:20-cv-02433-TLN-GGH  
6 (dismissing petitioner's habeas claims as second or successive).

7 Before a federal district court may entertain a claim in a second or successive petition, the  
8 petitioner must obtain permission from the appellate court. 28 U.S.C. § 2244(b)(3)(A). A petition  
9 is second or successive if it includes a claim that was or could have been adjudicated on the  
10 merits in an original petition. *Cooper v. Calderon*, 274 F.3d 1270, 1273 (9th Cir. 2001).  
11 Petitioner has not shown the appellate court provided permission for him to pursue a second or  
12 successive petition, and therefore his writ of habeas corpus must be dismissed.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The petition for writ of habeas corpus is dismissed;  
15 2. The Clerk of Court close this case; and  
16 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.  
17 § 2253.

18 DATED: August 16, 2021.

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21 CHIEF UNITED STATES DISTRICT JUDGE  
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